

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Ravi I. SHARMA

Serial No. : 10/528,164

Filed : March 14, 2005

For : INVERTED KEYBOARD INSTRUMENT
AND METHOD OF PLAYING THE
SAME

Group Art Unit : Not yet assigned

Examiner : Not yet assigned

Confirmation No. : 6495

**APPLICANT'S RESPONSE TO DECISION ON ALLEGED
RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

Office Of PCT Legal Administration
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicant submits this Response pursuant to a Decision On Renewed Petition issued by the U.S. Patent and Trademark Office ("USPTO") on August 23, 2007.

Despite facts which were explicitly set forth by Applicant both in his original Petition To Withdraw Holding Of Abandonment dated November 19, 2006 and in his Reply To Decision On Petition dated April 27, 2007, such facts were first mischaracterized by the Attorney Advisor who issued a Decision on this matter initially, then completely disregarded by a subsequent Attorney Advisor upon Applicant's request for reconsideration (such subsequent Advisor, indeed, being the fourth 4th such Advisor, we understand, to have picked up this matter at PCT Legal Administration - hereinafter "PCT Legal").

Specifically, in a First Decision On Petition dated January 12, 2007, PCT Legal, through an initial Attorney Advisor, consented to the propriety of Applicant's Rule 1.181 Petition as a proper basis for the remedy sought by Applicant, but denied such Petition on

grounds of Rule 1.2, indicating that oral communications from the PCT Help Desk as to the status of this Application cannot be relied upon - the Advisor characterizing the situation as one of mere "confusion resulting from [oral] miscommunication between the Applicant and the PCT Help Desk".¹

Indeed, in the First Decision On Petition, PCT Legal decided "right rule, insufficient facts".

Applicant responded, in a Reply To Decision On Petition (which PCT Legal decided to "treat" as a Renewed Petition Under Rule 1.181), that the prior Attorney Advisor had *inter alia* failed to consider the express written communications made to Applicant and his counsel as cited in his Petition, namely, the indication on PRIVATE PAIR that the Application was undergoing pre-examination processing, when in fact it was not.

Then, in a Decision On Renewed Petition, this one issued by a different and 4th Attorney Advisor to become involved in this matter, such Advisor implicitly agreed with Applicant that his facts as to the express written communications on PRIVATE PAIR were not considered, but then proceeded to deny the Renewed Petition, though again failing to consider the facts, on grounds that Applicant had simply filed his Petition under the wrong rule. (See Decision On Renewed Petition, page 2, paragraph 2).

In other words, in the Second Decision On Petition, PCT Legal ruled "sufficient facts, wrong rule".

Applicant respectfully states that PCT Legal has not only taken contradictory positions as to the propriety of Rule 1.181 as a basis for redress to Applicant, but it also acted to Applicant's detriment in opting to convert Applicant's Reply To Decision On Petition and Request For Reconsideration to a Renewed Petition under Rule 1.181, rather than to convert such Reply To Decision to a Petition Under Rule 1.183 or inviting Applicant to do the same, if such was necessary for just and proper consideration of Applicant's facts.

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¹ The Advisor also ruled that Applicant had not provided sufficient proof of submission of the Filing Fee, whereas Applicant had clearly and specifically stated that the issue of proof of submission was not the basis of his Petition.

Instead of treating Applicant justly and equitably, PCT Legal (i) has taken contradictory positions as to what is the proper basis for Applicant to seek redress;² (ii) has twice “dodged” ruling on the facts of Applicant’s original Petition, in general, and in addressing the false and misleading information provided repeatedly to Applicant and his counsel by PRIVATE PAIR and the PCT Help Desk as to the status of this Application, in particular, (iii) has ruled instead on Applicant’s Petition under Rule 1.137(b) which required no consideration of the facts, and charged the considerable Petition Fee to Applicant, and (iv) thereby severed a portion of Applicant’s Patent Term, again without ever considering Applicant’s facts.

We respectfully submit that this is not only improper, but also obstructionist.

V. **CONCLUSION**

Applicant and his counsel respectfully submit, now for a third time, that (i) they relied on the clear indications in the record, namely, on PRIVATE PAIR, that the Application was being processed, not merely on the oral representations made by the USPTO, and that (ii) such repeated misinformation lead them to take no corrective action regarding the Patent Office’s non-receipt of the Filing Fee during the ten (10) months that followed Applicant’s initial submission of this Application.

We respectfully request that the USPTO:

1. withdraw its Decision On Renewed Petition;
2. consider Applicant’s Reply To Decision justly and equitably, whether as a Petition under Rule 1.181 or as a Petition under Rule 1.183;
3. consider all of the facts set forth in Applicant’s Reply To Decision and in his original Petition To Withdraw Holding Of Abandonment, in a just and equitable fashion; and

² Applicant respectfully notes, in addition, that the initial Petition To Withdraw Holding Of Abandonment Under 37 C.F.R. § 1.181 was filed pursuant to telephone conferences with Examiner Leonard Smith of PCT Legal Administration as well as the Office Of Petitions for the USPTO, such Petition under Rule 1.181 being indicated by both to be the appropriate way for Applicant to proceed under the facts indicated.

4. resurrect this Application after considering all of the facts presented, and in accordance with the basis under which Applicant has sought to resurrect the Application.

Should the USPTO consider Applicant's Reply To Decision as a Petition under Rule 1.183 according to Item 3 above, Applicant attaches hereto a Credit Card Payment Form for the requisite Petition Fee.

Respectfully submitted,

Dated: December 29, 2007

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, in an envelope with sufficient postage addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on December 29, 2007

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